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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

Estate of EMMITT WILLIAMS,
Deceased.

SANDRA MERRIWEATHER et al.,
Petitioners and Appellants,
v.
RHONDA ELMORE-WILLIAMS,
Objector and Respondent.

A153276

(Solano County
Super. Ct. No. FPR046782)

Appellants appeal a December 8, 2017 order of the probate court directing that \$662,000 in an estate account be transferred to another account. They contend the order violates the Probate Code, which purportedly requires that estate funds be held in an insured account. Since the FDIC insures accounts to a maximum of \$250,000, they argue, the funds should be allocated to multiple accounts all within the FDIC-insured limits. The Probate Code does not support their argument, and we affirm the December 8 order.

BACKGROUND

Appellants Sandra Merriweather and Rita A. Williams-Washington (when referred to collectively, appellants) are the daughters of decedent Emmett G. Williams, who died

on September 24, 2014. Respondent Rhonda Elmore-Williams was Williams's wife at the time of his death—and thus appellants' stepmother. Elmore-Williams and Williams-Washington are co-administrators of the estate.

On October 2, 2014, Elmore-Williams filed a petition for probate of Williams's estate.

Williams's estate included two real properties valued collectively at \$880,000. In December 2016 and July 2017, the properties were sold, and the net proceeds of \$824,696 were deposited into an account at First Bank in Vallejo (the estate bank account).

At a hearing on December 8, 2017, Kenneth R. Bergquist, counsel for Elmore-Williams, advised the court that Williams-Washington had caused First Bank to transfer the funds from the estate bank account into a separate account held solely by Williams-Washington. Further informing the court that First Bank had indicated it would no longer handle an estate account with co-administrators, Bergquist requested that the co-administrators execute documents allowing First Bank to transfer the estate funds to a blocked account at First Northern Bank in Fairfield.¹

After discussing the matter with the court, Bergquist and counsel for appellants, Michael Thompson, orally stipulated that the estate funds on deposit at First Bank would be transferred to a blocked account at First Northern Bank. The court indicated that the arrangement needed to be memorialized in a court order and directed Bergquist to prepare a written stipulation and order, which he was to circulate to Thompson for his approval prior to submission to the court.

Bergquist prepared the stipulation and order as directed, and forwarded it to Thompson. Thompson declined to sign it, however, purportedly having realized after the December 8 hearing that \$412,000 of the funds to be transferred from the estate bank account to the First Northern Bank account would not be insured by the FDIC.² Via a

¹ The blocked account would require a court order for withdrawals.

² At that time, funds in the estate bank account totaled \$662,000.

letter dated December 17, 2017, Thompson informed Bergquist that appellants had filed a petition to revoke, modify, or amend the probate court's December 8 order directing that the entirety of the funds in the estate bank account be transferred to a blocked account at First Northern Bank (petition to revoke), set for hearing on February 7, 2018.

At a hearing on December 18, Thompson acknowledged he had received the proposed stipulation and order but informed the court he wished to revoke his prior stipulation.³ That same day, appellants filed their petition to revoke.⁴

On December 21, the trial court entered an order entitled, "Order for Transfer of Estate Funds from First Bank to First Northern Bank." It ordered:

"1. Immediately upon receipt of . . . this order, Co-Administrator, DR. RITA A. WILLIAMS-WASHINGTON shall execute all documents required by First Bank at the Vallejo branch to allow the Estate of Emmett G. Williams account at First Bank to be closed and the funds transferred to the Estate of Emmett G. Williams account at First[]Northern Bank at the Fairfield branch. Upon completion of the documents at First Bank, Dr. Rita A. Williams-Washington, or her attorney, Mr. Thompson, shall immediately notify Mr. Bergquist that the documents have been completed.

"2. Immediately upon receipt of notice that Dr. Rita A. Williams-Washington has executed documents at First Bank, Co-Administrator, Mrs. Elmore-Williams shall

³ Appellants did not designate the transcript of the December 18 hearing as part of the reporter's transcript on appeal. Thus, the only thing we know about what transpired at that hearing is from the court's December 21 order in which it stated, "On or about December 18, 2017, Mr. Thompson acknowledged receipt of the proposed Stipulation and Order, attempted to recant his prior stipulation in open court and indicated that he filed a motion set for hearing on February 8 [*sic*], 2018 in Department 22."

⁴ The petition is not in the record before us, nor is the opposition filed by Elmore-Williams on February 1 or the reply filed by appellants on February 6. This is likely because appellants failed to comply with the instruction on the form notice designating record on appeal to "identify each document you want included by its title and provide the date it was filed" Appellants' notice designated, as item number 10 of the clerk's transcript, "Court File and Reporter's Transcript arising from Petition to Revoke, Amend, or Modify The Court's Order Issued in Department 22 From the Bench on December 8, 2017, Regarding the Estate Bank Accounts—CCP 1008."

execute all documents required by First Bank at the Vallejo branch to allow the Estate of Emmett G. Williams account at First Bank to be closed and the funds transferred to the Estate of Emmett G. Williams account at First Northern Bank at the Fairfield branch. Upon completion of the documents at First Bank, Mrs. Elmore-Williams, or her attorney, Mr. Bergquist, shall immediately notify Mr. Thompson that the documents have been completed and submitted to First Bank.

“3. Upon receipt of the documents executed by Dr. Rita A. Williams-Washington and Mrs. Elmore-Williams, First Bank shall immediately transfer all funds held in the Estate of Emmett G. Williams account to First Northern Bank for deposit into the blocked account for the Estate of Emmett G. Williams, Account #XXXX832. The banks shall cooperate to minimize the costs of transfer.”

On December 28, appellants appealed the December 21 order.

Appellants’ petition to revoke came on for hearing on February 7, 2018, with only Bergquist in attendance. At the hearing, the court ruled as follows:

“[T]his matter is on calendar for petition to revoke, amend, or modify the court’s order issued in Department 22 from the bench on December 8, 2017 regarding the estate bank accounts as well as the opposition to the motion to revoke, modify or amend the Court’s stipulated order of December 8, 2017.

“The Court understands that Mr. Thompson, on behalf of his clients, have appealed the court’s order to the Court of Appeal. In view of the automatic stay of appeal imposed by the Probate Code, Section 1310, the court lacks jurisdiction to consider the petition; therefore, the petition is taken off calendar. Once the appeal is concluded the petition may be put back on calendar through the filing and service of a new notice of hearing.”⁵

⁵ While Probate Code section 1310, subdivision (a) provides that an appeal of a probate judgment or order “stays the operation and effect of the judgment or order,” subdivision (b) provides in pertinent part, “Notwithstanding that an appeal is taken from the judgment or order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the fiduciary . . . from time to time, as if no appeal were pending.” We query whether subdivision (b) would have

DISCUSSION

The essence of appellants' argument is that the probate court erred by ordering the proceeds of the estate bank account, which totaled \$662,000, rolled over into a single, blocked account at First Northern Bank because the Probate Code requires that estate money be held in an FDIC insured account, but such accounts are only insured up to \$250,000. According to appellants, the court's order would leave \$412,000 uninsured, "in violation of California Probate Code Sections 22, 23, 46 and 9700." Appellants contend "that it would be consistent with the prevailing case law and statutory authority, in the best interest of the estate, to allocate the \$662,000.00 on deposit between three separate insured estate bank accounts . . . as opposed to the entirety of this sum being deposited into a single account" We reject appellants' argument, as it is unsupported by legal authority.

To begin with, appellants claim that "it would be consistent with the prevailing case law" to allocate the estate funds between three insured accounts, yet they do not cite a single case in their opening brief,⁶ let alone identify "prevailing case law" supporting their position. In any event, the law is contrary: the Probate Code itself does not require that the administrator of an estate maintain the estate assets in an insured account.

Probate Code section 9652, subdivision (a) mandates that, subject to certain exceptions not pertinent here, "the personal representative shall keep all cash in his or her possession invested in interest-bearing accounts or other investments authorized by law." Section 9700 provides that "the personal representative may deposit money of the estate in an insured account in a financial institution in this state." As can be seen, section 9652—requiring investment of the funds in an interest-bearing account—is mandatory,

permitted the court here to consider the petition to revoke, assuming (as we must, since it is not part of the record) that it sought to modify the December 21 order to direct that the estate funds be allocated to multiple accounts so that all funds were FDIC insured, thus potentially "preventing . . . loss to . . . property" as provided by the subdivision.

⁶ The only brief filed by either party.

while section 9700—allowing deposit of the funds in an insured account—is permissive. (See 14 Witkin, Summary of Cal. Law (11th ed. 2017) Wills and Probate, § 519, p. 578 [“The personal representative may deposit money of the estate in an insured account in a financial institution in California”], § 520, p. 579 [“A personal representative must invest cash in the estate in interest-bearing accounts or in other investments authorized by law . . .”].) Had the Legislature intended section 9700 to be mandatory, it could have made it so, as it did elsewhere in the Probate Code. (See, e.g., Prob. Code, § 7640, subd. (a) [“The public administrator shall, upon receipt, deposit all money of the estate in an insured account in a financial institution or with the county treasurer of the county in which the proceedings are pending”].) It did not, and appellants cite no other authority requiring that the estate funds be maintained in an insured account.⁷

Appellants also purport to be appealing the February 7, 2018 order dropping their petition to revoke from the calendar. Appellants’ notice of appeal was filed December 28, 2017. It goes without saying that the February 7 order cannot be the subject of an appeal filed 41 days before the order was even entered. Moreover, given appellants’ failure to designate the petition to revoke and related pleadings as part of the record, we would not be able to evaluate their claim even if the February 7 order was in fact before us.

DISPOSITION

The December 21, 2017 order is affirmed.

⁷ Appellants also cite Probate Code sections 22, 23, and 46. Section 22 defines “Account in an insured credit union,” section 23 defines “Account in an insured savings and loan association,” and section 46 defines “Insured account in a financial institution.” These definitions have nothing to do with the obligations of the administrator of an estate in maintaining estate funds.

Richman, Acting P.J.

We concur:

Stewart, J.

Miller, J.

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